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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,370	02/12/2004	Heinz Gemgross	51919/TJD/M881	4592

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EXAMINER
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AMARELD JR, ROBERT W

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/777,370	<b>Applicant(s)</b> GERNGROSS ET AL.	
	<b>Examiner</b> Robert W. Amareld, Jr.	<b>Art Unit</b> 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 24204, 3/2/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 9, 10, 13, 15, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Depage. Depage discloses an anchoring element (a), being a bolt, which can be connected to an implant and comprises an elongate coupling member (d) that is fastened to the bolt and has a length such that the handling section (d') can be placed at a position remote from the anchoring element and could be placed beneath the skin, where the coupling member is a flexible wire (column 1, lines 45-48). The bolt (a) has threads and is a screw which could be screwed into an implant and can be a terminal element and could be described as a plug screw with an external threading that could be screwed into the internal threading of an implant where the implant could be a medullary nail where the implant is capable of removing the nail. The device described by Depage is a surgical device and therefore must be inherently made of biocompatible material.

Claims 1, 4, 8 & 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller (US Pat# 5707394). Miller discloses a threaded anchoring element (10) connected to the coupling member (30), comprised of suture

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material (column 4, lines 24—32). The connecting member of the suture may be folded back onto itself after passing through the anchor eyelet, at which point the connecting member becomes a plurality of load carriers with ends (30a, 30b), (column 4, lines 27-30) where the connecting member is “long enough to be suitable for the procedure for which the suture anchor is intended” (column 4, lines 26-27) which may include lengths where the handling end (rod 36) of the device can be placed in a patients body remotely from the anchor. The anchor is externally threaded and is capable of use as a plug screw into an internally threaded implant.

Claims 1, 7, 8, 10, 12-14, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Dakin (US Pat# 6368326). Dakin discloses anchoring element (32) which can be connected to an implant and is fastened to a coupling cord (64, 22, 52, 110). The cord has handling portions (Figure 9A, 52.1) which are capable of being separate from the anchor, is referred to as a cable (column 7, line 22) and may be a wire, wire braid or suture comprised of stainless steel or other appropriate material that may be biocompatible (column 4, lines 54-65), a wire braid comprising a plurality of load carriers. The handling portion of the wire may be formed into a loop as shown in Figure 14C and described in column 12, lines 9 & 10 as well as in column 13 lines 18-19. As shown in Figure 10, the cord (64) may be fastened at one end to the anchoring element (24) via the locking screw (28).

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**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Whiteside, US Pat #5772663- banding cable; Chin, US Pat# 5222958- apparatus for removing prosthetics; Miller, US Pat# 5318566- sternotomy cable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Amareld, Jr. whose telephone number is 571-272-6170. The examiner can normally be reached on M-F 9am - 5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert W Amareld, Jr., Examiner , Art Unit 3738

RWA

  
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